

# **EXHIBIT**

# **4**

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1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF DELAWARE  
3  
4 PHILLIPS, L.G., LCD CO., LTD, )  
5 Plaintiffs, ) C.A. No. 04-343(JJF)  
6 v. )  
7 TATUNG CO., TATUNG COMPANY OF )  
8 AMERICA, INC., and VIEWSONIC )  
9 CORPORATION, )  
10 Defendants. )

11 Hearing of above matter taken pursuant to  
12 notice before Renee A. Meyers, Registered Professional  
13 Reporter and Notary Public, in the law offices of BLANK  
14 ROME, LLP, 1201 North Market Street, Wilmington,  
15 Delaware, on Friday, April 13, 2007, beginning at  
16 approximately 11:45 a.m., there being present:

17 BEFORE: VINCENT J. POPPITI, SPECIAL MASTER

18 APPEARANCES:

19 THE BAYARD FIRM  
20 MARY E. AUGUSTINE, ESQ.  
21 222 Delaware Avenue, suite 900  
22 Wilmington, Delaware 19899  
23 for Plaintiffs

24

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1 APPEARANCES (Continued):

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1 to determine whether we need to fight about that or not  
2 as opposed to whether we are going to produce them.

3 So I think we are trying to see if the  
4 issue just goes away because if there aren't documents,  
5 then I guess that will resolve it. If there are  
6 documents, we still will have to cross that bridge at the  
7 7.1.1. And I know you started out today saying you  
8 wanted to address those first, but we have kind of gone  
9 in the reverse order.

10 SPECIAL MASTER POPPITI: Yes, we have  
11 gone in the reverse order. I think we just wound up  
12 there.

13 MR. MILLER: If that's okay with Your  
14 Honor?

15 SPECIAL MASTER POPPITI: It is. I  
16 understand. So that we will look at that on Tuesday.

17 MR. CHRISTENSON: Your Honor, the next  
18 issue --

19 SPECIAL MASTER POPPITI: In that  
20 application?

21 MR. CHRISTENSON: Yes, Your Honor. Just  
22 continuing down, the next issue is documents related to,  
23 I think, import, and my understanding, we had -- I had  
24 discussed with counsel LPL's document request No. 67, and

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1 my understanding is that they have -- they stated that

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2 they have produced import documents that are sufficient  
3 to show all imports of all of ViewSonic's products, and  
4 that that is, therefore -- that that, therefore,  
5 satisfies their burden to respond to that document  
6 request.

7 We had asked for, if they exist, and we  
8 had discussed in the depositions whether ViewSonic has  
9 data available in theirs, electronically, that they could  
10 produce as a report to us that would show, for example,  
11 all the products that were imported into the U.S. because  
12 we felt that that would be discoverable under Rule 34(b),  
13 especially as recently amended to allow for discovery of  
14 electronically stored information, and we had addressed,  
15 I think, a similar issue at the December 28th hearing  
16 before you, and you had stated in your review that  
17 counsel was not obligated to, as a courtesy, I believe  
18 you stated, produce information.

19 SPECIAL MASTER POPPITI: That was my  
20 word.

21 MR. CHRISTENSON: And I certainly  
22 understand that. But I raised this issue now again only  
23 because, based on the testimony, it appeared to me that  
24 it might be as simple as just generating a report from

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1 existing data and that, you know, that that production  
2 would essentially be the production of the data as  
3 printed.

4 So, the question was: Does the data  
5 exist to be provided in a report, and, if so, is that  
6 discoverable? I think that I understood counsel from

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7 viewSonic to tell me this week that they don't have that  
8 data in such form that could be generated into a report,  
9 and if that's the case, I guess, you know, then we don't  
10 get to question two on discoverability.

11 SPECIAL MASTER POPPITI: Mr. Miller.

12 MR. MILLER: It is my understanding that  
13 they cannot generate a report that shows sales of  
14 products that were manufactured by OEMs, on an OEM basis.

15 SPECIAL MASTER POPPITI:

16 Mr. Christenson, your understanding of what Mr. Miller  
17 said has just been confirmed.

18 MR. CHRISTENSON: Well, there were, I  
19 take it, two different questions. One was whether a  
20 report existed that, this is on paragraph three of page  
21 1, we had talked about whether a report could be provided  
22 showing total quantities by model, that is, that a  
23 supplier like Tatung had provided -- I think that's what  
24 Mr. Miller was just speaking to -- then there is another

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1 question, at the very last paragraph on page 2 of our  
2 motion, which is actually what I was referring to, which  
3 is: Is there a report that would show what products were  
4 imported into the U.S., so that -- the alternative would  
5 be we would look at, on a page-by-page,  
6 transaction-by-transaction basis, trying to cobble  
7 together, from thousands of pages, the total numbers of  
8 imported products.

9 And, so, what we are seeking is, if  
10 there is the ability to generate a report right from data

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11 that exists in the system, we feel that would be  
12 discoverable, and we would, therefore, avoid the burden  
13 of compiling that report that already exists.

14 So, I think that -- I don't know whether  
15 Mr. Miller addressed that type of report of whether all  
16 products imported into the U.S. is available.

17 SPECIAL MASTER POPPITI: Mr. Miller.

18 MR. MILLER: This is exactly the issue  
19 we discussed on December 28th. The document request  
20 seeks documents sufficient to determine the quantity of  
21 products imported into the United States, and those are  
22 the documents we have produced. I assume -- it sounds  
23 like they'd like to rewrite that request to say, "summary  
24 documents sufficient to show that," but they didn't.

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1 I have not gone to specifically  
2 investigate this because this was an issue, I believe,  
3 that was squarely addressed by Your Honor and this motion  
4 to compel is an improper vehicle to try to seek  
5 reconsideration, it seems to me.

6 SPECIAL MASTER POPPITI: Yeah. It looks  
7 -- it certainly looks to me like the same issue,  
8 Mr. Christenson. And the only issue that -- and I don't  
9 think the issue needs to be discussed further unless you  
10 have some authority that you want to bring to my  
11 attention that would suggest that what I concluded in  
12 December was not the correct conclusion, and that is  
13 this: I don't know that the -- the fact that we live in  
14 a data filled business world, data that is accessible  
15 electronically, should result in any different conclusion

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16 when it comes to the production of a report that is not  
17 -- that is not generated during the -- during the  
18 customary usual business.

19 I don't know that that request is any  
20 different after the rules changed then before because I  
21 don't know that the rules mean that someone should be  
22 doing something that they don't otherwise do as opposed  
23 to literally providing you with all of the data that they  
24 have and you do whatever you want with it, data in even

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1 native format, if you will.

2 So, I don't see anything that you have  
3 brought to my attention, by virtue of your March 30  
4 application, that would cause me to reexamine my own  
5 view, and, that is, it would be a courtesy because it is  
6 not generated during the, I am told, during the ordinary  
7 course of business.

8 MR. CHRISTENSON: That may be true, Your  
9 Honor. I am not sure if Mr. Miller stated that or if he  
10 stated he had not investigated that.

11 SPECIAL MASTER POPPITI: Well, I --  
12 Mr. Miller, you can speak for yourself, but let me tell  
13 you what I thought you said: That we did discuss this in  
14 another hearing, that you do not generate the reports  
15 that are being -- a report that is being requested, and  
16 you have provided data from which the plaintiffs can  
17 examine the information and come to their own  
18 conclusions; did I understand you incorrectly?

19 MR. MILLER: I think, Your Honor, that

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20 what I had said was the document request seeks documents  
21 sufficient to ascertain the quantity and price of each  
22 product imported.

23 SPECIAL MASTER POPPITI: Right.

24 MR. MILLER: We were making available

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1 the documents that show all importation of products by  
2 viewSonic, and they will have invoices, bills of lading,  
3 and other materials in them that are sufficient in the  
4 original documentation, but to the extent that the  
5 information is in the computer system, it would have been  
6 inputted from those documents.

7 I don't believe that -- I have not  
8 confirmed that they do not prepare a summary report in  
9 the ordinary course of business, and I don't believe that  
10 specific issue was inquired upon at the December 28th  
11 hearing. It was a question of whether or not, given the  
12 language of the request, itself --

13 SPECIAL MASTER POPPITI: In other words,  
14 the language of the request being sufficient enough?

15 MR. MILLER: Yes.

16 SPECIAL MASTER POPPITI: Well, I  
17 certainly don't have a record before me that will permit  
18 me to make that determination, do I, as to whether it's  
19 sufficient or insufficient?

20 MR. MILLER: I don't believe there is  
21 any suggestion that it's not sufficient.

22 SPECIAL MASTER POPPITI: Right. Isn't  
23 that correct, Mr. Christenson?

24 MR. CHRISTENSON: We certainly have not



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1 made a record, Your Honor, that it's not sufficient. I  
2 agree with that.

3 SPECIAL MASTER POPPITI: That's what was  
4 asked for, is it not?

5 MR. CHRISTENSON: With respect to that  
6 document request, Your Honor, it is. I would have to see  
7 if there were others. I mean --

8 SPECIAL MASTER POPPITI: Okay. Well, I  
9 am focused on that particular document request.

10 MR. CHRISTENSON: All right. So, in  
11 response to your question about, Do I have other  
12 authority?, Your Honor, I do not. The only thing I am  
13 aware of is that we had produced very voluminous reports  
14 that is not something that we had other than to prepare  
15 and produce.

16 SPECIAL MASTER POPPITI: I understand  
17 that, and that's why you all better know than the  
18 framework that I used back in December because you are  
19 focused on this particular application. I did not  
20 revisit it, you reminded me of it, but I see -- I said it  
21 that way before and I say it again: The fact that you  
22 have done a courtesy, that's a good thing. The fact that  
23 a courtesy is not being extended to you, I am not going  
24 to make a comment that that's a bad thing. It's just not

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1 a courtesy that viewSonic is willing to extend. And they

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2 are framing that against the specificity of your request.

3 MR. CHRISTENSON: All right. Your  
4 Honor, the other issue that's raised, and I think it's  
5 the last issue raised in this motion, is at the bottom of  
6 the first page of our letter, we are asking for documents  
7 that show specifically sales within the United States.  
8 The documents that were produced by ViewSonic, as we  
9 learned in the deposition, are documents that show sales  
10 by ViewSonic within North America, generally.

11 SPECIAL MASTER POPPITI: Right.

12 MR. CHRISTENSON: And then ViewSonic  
13 also, I think, has produced some documents from which you  
14 could determine, if you do some math, you could  
15 determine, presumably -- I haven't tried to do this --  
16 but, presumably, you could deduct that subset from the  
17 overall shipment and come up with U.S. shipments.

18 what we are asking to compel are the  
19 documents that we believe exist that already have done  
20 that, that are documents that ViewSonic has from the  
21 ordinary course of business that isolate shipments  
22 specifically within the U.S. Those were documents that  
23 we obtained in the prior CPT case in Delaware before  
24 Judge Farnan that went to trial last year.

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1 So, rather than -- it seems to me part  
2 of the purpose of discovery is to try to be efficient and  
3 taking, you know, the rule of No. 1 of the Rules of  
4 Procedure, promoting a just and efficient and inexpensive  
5 resolution, it seems to me if the documents exist that  
6 have already carved out the non-U.S. shipment, it would

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7 make sense for us to have those documents rather than  
8 having to redo the math.

9 SPECIAL MASTER POPPITI: Mr. Miller.

10 MR. MILLER: Your Honor, I was not  
11 counsel in that case, but I can tell you what I know and  
12 what the witness testified to here. The witness  
13 testified to here that it was not possible to isolate  
14 sales in the United States in the summary form that LPL  
15 has asked.

16 It would have to be done on a  
17 customer-by-customer basis, and I am reminded of the long  
18 discussion that took place between LPL and Tatung where  
19 LPL held out the summary reports that ViewSonic had  
20 prepared as what they were looking for, not a  
21 customer-by-customer recitation of sales on a -- you  
22 know, these are voluminous and would require them to do  
23 other math.

24 what Miss Stetson testified to is in our

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1 opposition in specificity, and says, No, it cannot be  
2 prepared in a summary form. Mr. Christenson asked the  
3 question, "All right. In what form can that report be  
4 generated"?

5 "ANSWER: We would have -- we would have  
6 to generate a report for each customer within that  
7 country, and then, somehow, they would need to be added  
8 together.

9 That's not a burden that we, obviously,  
10 should be obligated to undertake. I believe that, while

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11 I have invited counsel to give us Bates Nos. of documents  
12 produced in other cases, so there were issues, and the  
13 invitation extends back to September of last year, that's  
14 never been provided to us, my understanding is that, to  
15 the extent those documents that were produced in those  
16 cases were decided to be done as U.S. sales, there was  
17 merely a decision by ViewSonic not to try to go through  
18 and identify foreign sales.

19 In this case, we did go through and  
20 identify foreign sales and do some of this -- what  
21 Miss Stetson testified to here, we would have to do for  
22 the U.S. because the non-U.S. sales are substantially  
23 less. We were able to do that on a non-U.S. sales basis  
24 and give them the information of non-U.S. sales that they

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1 could deduct from the all American sales.

2 MR. CHRISTENSON: Your Honor, having  
3 heard what Mr. Miller said, perhaps the best way to  
4 pursue this is to take him up on his offer. I can check  
5 to see the documents that I am referring to from the  
6 other case and confirm that they are what I think they  
7 are, and then I can give him those Bates Nos., and if we  
8 need to, we can try to work something out.

9 SPECIAL MASTER POPPITI: Mr. Miller.

10 MR. MILLER: I am not very receptive to  
11 working out more work for my client, but I am happy to  
12 hear what Mr. Christenson has to say.

13 SPECIAL MASTER POPPITI: Thank you for  
14 doing that, sir. So I am going to, just with respect to  
15 this one issue, I may be asked to revisit at least from a

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16 status point of view; correct?

17 MR. CHRISTENSON: Yes, Your Honor.

18 SPECIAL MASTER POPPITI: All right.

19 MR. CHRISTENSON: Otherwise, I think  
20 that's the last issue in our motion.

21 SPECIAL MASTER POPPITI: It is. Just  
22 one moment. Let me make a note here. That brings us to  
23 5:00. I appreciate your attention throughout what has  
24 been, I think, a long session, and I think we should all

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1 go tend to our respective colds and flues. Everyone,  
2 please have a nice weekend and I look forward to working  
3 with you on Tuesday.

4 MR. CHRISTENSON: Thank you, Your Honor.

5 MS. HO: Thank you.

6 (The hearing was concluded at 5:04 p.m.)

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